



1300 Pennsylvania Avenue NW, Suite 190-322, Washington, DC 20004

July 10, 2014

Marlene H. Dortch Secretary
Federal Communications Commission
445 12th Street, SW Washington, DC 20554

RE: GN Docket 14-28 Open Internet Remand

Dear Ms. Dortch:

On July 8, 2014, in connection with the above referenced proceeding, Daniel Berninger with the Voice Communication Exchange Committee (“VCXC”) and IP communications pioneer Jeff Pulver met with Commissioner Ajit Pai and also Matthew DelNero of the Wireline Competition Bureau and Stephanie Weiner of the Office of General Counsel in separate meetings.

The discussion addressed the implications of imposing Title II rules on broadband internet access as the authority for Open Internet Rules on the FCC's 2004 “Pulver Order”¹ decision. The Pulver Order recognizes the non-regulated information service status of over-the-top non-connected VoIP providers like Apple's Facetime application. The Pulver Order represents one of the series of decisions by the Commission preserving the non-regulated information services status of IP communication networks and services. The Pulver Order reflects a decision by the Commission to prioritize the non-regulation of IP networks over even voice as the long standing “bright red line” separating telecom and information services.

The imposition of Title II rules on internet access ends the reliance on IP networks as a useful operational definition distinguishing between regulated and non-regulated services. The assurances of forbearance regarding the types of services addressed by the Pulver Order do not diminish the material implications of this potential change in policy. There exists a significant difference between the non-regulation/regulation and non-forbearance/forbearance distinctions. The former addresses an enforceable legal distinction and the latter mere discretion of the FCC. It turns the non-regulated status of the entire multi-trillion dollar information technology sector into a forbearance question at the discretion of the FCC.

The regulated versus non-regulated distinction between telecom and information services represents the most thoroughly examined question in all of communication policy. The distinction originates with the AT&T Consent Decree in 1956 and gets refined through three Computer Inquiries as well as the Telecom Act of 1996. The distinction represents a primary factor shaping the AT&T Divestiture in 1984. The dramatic expansion of the information technology sector serves as a testament to the

1 https://apps.fcc.gov/edocs_public/attachmatch/FCC-04-27A1.pdf

remarkable success of the policy. Abandoning the policy in order to obtain authority for imposing Open Internet Rules deserves a far more deliberation and extensive evidence of market failure than exists in the record.

The advocacy for applying Title II to the internet ironically leverages telco animus tracing to the bad old days of the Title II telephone network. The 1000x expansion of internet access from 9.6Kbs dial-up modems occurred after internet was designated a non-regulated information service. The now routine 10Mbs connectivity cost \$20,000 per month as a Title II service in 1990's. There exists nothing in the 80 year history of Title II that suggests optimism about the next 1000x expansion toward 10Gbs routine connectivity.

Pursuant to 47 C.F.R § 1.1206 of the Commission's rules, please include this ex parte filing in the above referenced docket.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'D. Berninger', with a stylized flourish at the end.

Daniel Berninger
founder, VCXC

cc: Commissioner Ajit Pai
Matthew DelNero
Stephanie Weiner